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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

v.

WALKER RIVER IRRIGATION DISTRICT,
a corporation, et al.,

Defendants.

3:73-cv-00127-MMD-WGC

**THE SCHROEDER GROUP'S
ANSWER TO SECOND AMENDED
COUNTERCLAIM OF THE WALKER
RIVER PAIUTE TRIBE**

Defendants Fenili Family Trust c/o Peter Fenili and Veronica Fenili, Trustees; Six-N Ranch, Inc. c/o Richard & Cynthia Nuti, Michael & Nancy Nuti, Ralph C. & Mary R. Nuti, Ralph E. & Mary E. Nuti, and Lawrence M. & Leslie Nuti; John and Lura Weaver Family Trust c/o Lura Weaver, Trustee; Smith Valley Garage, Inc. c/o Dan Smith and Shawna Smith; and Donald Giorgi, hereinafter referred to as the "Schroeder Group," by and through their counsel of record Schroeder Law Offices, P.C., hereby answer the Second Amended Counterclaim of the Walker River Paiute Tribe filed herein on May 3, 2019 (the "Second Amended Counterclaim") as follows:



INTRODUCTION

This Answer is made subject to the provisions of the Stipulated Scheduling Order and Discovery Plan dated March 7, 2019 (ECF No. 2437) that provides allowance for answers and affirmative defenses specifically directing that no counterclaims be required or permitted.

1. The allegations contained in paragraph 1 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.

2. The allegations contained in paragraph 2 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.

3. The allegations contained in paragraph 3 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.

JURISDICTION

4. The allegations contained in paragraph 4 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.

PARTIES

5. On information and belief, the Schroeder Group admits the allegations contained in paragraph 5.

6. The Schroeder Group admits it's members hold decreed and other water rights of use to the waters of the Walker River and its tributaries including groundwater. The Schroeder Group is without sufficient information to admit or deny the remaining allegations of paragraph 6, and on that basis, denies them.

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GENERAL ALLEGATIONS

7. The allegations in paragraph 7 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.

8. The allegations in paragraph 8 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.

9. The Schroeder Group admits that in 1924, the United States commenced an action in this Court for purposes including the determination and quantification of water rights of use on the Walker River Indian Reservation. The remaining allegations of paragraph 9 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.

10. The Schroeder Group admits the final judgment entered in *United States of America v. Walker River Irrigation District, et al.*, In Equity No. C-125 (D. Nev.) on April 14, 1936, as amended on April 24, 1940 (the "Decree"), includes water rights of use decreed to the United States of America for the Walker River Indian Reservation. The Decree is the best evidence of its provisions, and speaks for itself. The Schroeder Group denies the remaining allegations in paragraph 10 of the Second Amended Counterclaim correctly describe those provisions of the final judgment, and on that basis, denies them.

11. The Schroeder Group admits since April 14, 1936, persons and entities have appropriated water from sources within the Walker River Basin pursuant to and consistent with the laws of the State of Nevada and the State of California. The remaining allegations of paragraph 11 consist of legal conclusions and do not require a response. To the extent a response is required, the Schroeder Group denies them.

12. The Schroeder Group lacks sufficient information to admit or deny the first two sentences of paragraph 12, and on that basis, denies them. The remaining allegations in



1 paragraph 12 of the Second Amended Counterclaim consist of legal conclusions that do not
2 require a response. To the extent a response is required, the Schroeder Group denies them.

3 13. The Schroeder Group lacks sufficient information to admit or deny the allegations
4 contained in paragraph 13 of the Second Amended Counterclaim, and on that basis, denies them.

5 14. The allegations in paragraph 14 of the Second Amended Counterclaim consist of
6 legal conclusions that do not require a response. To the extent a response is required, the
7 Schroeder Group denies them.

8 15. The allegations in paragraph 15 of the Second Amended Counterclaim consist of
9 legal conclusions that do not require a response. To the extent a response is required, the
10 Schroeder Group denies them.

11 16. The Schroeder Group admits that Paragraph XIV of the Decree includes
12 provisions pursuant to which the Court retained jurisdiction of the "cause." The Decree as
13 amended is the best evidence of, and speaks for itself, with respect to the content of its Paragraph
14 XIV. To the extent paragraph 16 alleges evidence otherwise, the Schroeder Group denies them.

15 **FIRST CLAIM FOR RELIEF**

16 17. The Schroeder Group realleges and reincorporates herein by reference each and
17 every response contained in paragraphs 1 through 16 of its Answer to the Second Amended
18 Counterclaim as if fully set forth herein.

19 18. The allegations in paragraph 18 of the Second Amended Counterclaim consist of
20 legal conclusions that do not require a response. To the extent a response is required, the
21 Schroeder Group denies them.

22 19. The allegations in paragraph 19 of the Second Amended Counterclaim consist of
23 legal conclusions that do not require a response. To the extent a response is required, the
24 Schroeder Group denies them.

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SECOND CLAIM FOR RELIEF

20. The Schroeder Group realleges and reincorporates herein by reference each and every response contained in paragraphs 1 through 19 of its Answer to the Second Amended Counterclaim as if fully set forth herein.

21. The allegations in paragraph 21 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.

22. The allegations in paragraph 22 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.

23. The allegations in paragraph 23 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.

THIRD CLAIM FOR RELIEF

24. The Schroeder Group realleges and reincorporates herein by reference each and every response contained in paragraphs 1 through 23 of its Answer to the Second Amended Counterclaim as if fully set forth herein.

25. The allegations in paragraph 25 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.

26. The allegations contained in paragraph 26 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.

27. The allegations contained in paragraph 27 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, the Schroeder Group denies them.



AFFIRMATIVE DEFENSES

First Affirmative Defense

The Second Amended Counterclaim and each and every Claim for Relief stated therein fails to state a claim upon which relief may be granted.

Second Affirmative Defense

The Second Amended Counterclaim and each and every claim for relief stated therein is, by reason of the Decree, barred by the doctrines of claim preclusion, issue preclusion and/or other principles of finality set forth in *Nevada v. United States*, 463 U.S. 110 (1983) and in *Arizona v. California*, 460 U.S. 605 (1983).

Third Affirmative Defense

“General Principles of finality and repose” that apply to water rights decrees, *Arizona v. California*, 460 U.S. 605, 619 (1983), preclude Paragraph XIV of the Decree from being construed as authorizing the modification of the Decree to recognize additional reserved water rights for the Tribe that were not recognized and established in the Decree.

Fourth Affirmative Defense

The Second Amended Counterclaim and each and every claim for relief stated therein is barred by the doctrine of laches.

Fifth Affirmative Defense

The Second Amended Counterclaim and each and every claim for relief stated therein is barred by the doctrine of estoppel.

Sixth Affirmative Defense

Through commencement and resolution of claims against the United States by the Walker River Paiute Tribe, the Second Amended Counterclaim and each and every claim for relief stated therein have been waived, and are therefore extinguished.

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1 **Seventh Affirmative Defense**

2 A federal reserved water right exists only if “necessary” to fulfill the primary purposes –
3 as opposed to the secondary purposes – of the federal reserved lands, *United States v. New*
4 *Mexico*, 438 U.S. 696, 700-702 (1978), and only to the extent necessary to meet the “minimal
5 need” of the federal reservation, “no more.” *Cappaert v. United States*, 426 U.S. 128, 141
6 (1976). The Tribe has failed to allege or show that the water granted to the Tribe in the Walker
7 River Decree is insufficient to meet the primary purposes for which the lands were added to the
8 Walker River Indian Reservation, and that the additional water from any source is “necessary” to
9 fulfill the primary purposes of such added lands. Thus, the Tribe does not have a reserved right
10 to additional water for the lands that have been added to the reservation.

11 **Eighth Affirmative Defense**

12 Under the implied reservation of water doctrine, the United States may not reserve water
13 from a water source that is not within the lands which are being reserved. To the extent that the
14 Second Amended Counterclaim and any claim for relief therein seeks water from a source for
15 lands which did not include that water source at the time of reservation, no such claim can be
16 made.

17 **Ninth Affirmative Defense**

18 The primary purpose of adding lands to the Walker River Indian Reservation from 1918
19 to 1972 was for purposes of dry land grazing that requires no water for irrigation and only
20 sufficient water for the number of livestock that can be reasonably grazed on such lands.

21 **Tenth Affirmative Defense**

22 The implied reservation of water rights doctrine does not apply to storage of water,
23 including, but not limited to, storage for any purpose, including carryover and conservation.

24 **Eleventh Affirmative Defense**

25 The implied reservation of water rights doctrine does not apply to groundwater.

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Twelfth Affirmative Defense

If the implied reservation of water rights doctrine applies to groundwater, it does so only in circumstances where it is established that there is insufficient surface water to otherwise satisfy the claimed reserved water right. The water right provided for the Walker River Indian Reservation by the Decree is sufficient to accomplish the purposes for which lands were added to the Reservation.

Thirteenth Affirmative Defense

The United States had no power, after Nevada became a State on October 31, 1864, to reserve water for the benefit and use of federal land.

Fourteenth Affirmative Defense

In withdrawing from the public domain some or all of the lands added to the Walker River Indian Reservation, Congress provided that the withdrawal should not affect existing legal rights, or valid rights, which includes, but is not limited to, the right of the State of Nevada to control and regulate the use of its waters.

Fifteenth Affirmative Defense

To the extent that this Court determines that any addition of land to the Walker River Indian Reservation resulted in the reservation of water, the use of that water must be restricted to the use impliedly contemplated at the time the land was added to the Reservation, and any change to that use is subject to the provisions of Paragraph X of the Decree and to the Administrative Rules and Regulations Regarding Change of Point of Diversion, Manner of Use or Place of Use of Water of the Walker River and Its Tributaries and Regarding Compliance With California Fish and Game Code Section 5937 and Other Provisions of California Law as approved by the Court on June 3, 1996.

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Sixteenth Affirmative Defense

The Schroeder Group reserves the right to amend this answer as additional affirmative defenses are discovered.

WHEREFORE, the Schroeder Group prays for judgment against the Walker River Paiute Tribe as follows:

1. For the dismissal of the Second Amended Counterclaim;
2. For its costs of suit allowed by law; and
3. For such other and further relief as the Court deems just and proper.

DATED this 1st day of August, 2019.

SCHROEDER LAW OFFICES, P.C.

/s/ Therese A. Ure

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CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2019 I caused a copy of the foregoing ***THE SCHROEDER GROUP'S ANSWER TO SECOND AMENDED COUNTERCLAIM OF THE WALKER RIVER PAIUTE TRIBE*** to be served automatically on all Represented Parties through the District Court of Nevada's CM/ECF system and automatically served by the Court on all unrepresented parties who consent to receive service by email.

Dated this 1st day of August, 2019.

/s/ Therese A. Ure

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